

**REDACTED
FOR PUBLIC DISCLOSURE**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Level 3's Request for Special)	WC DOCKET NO. 08-154
Temporary Authorization of Thousand-)	
Block Codes in Area Code 603		

**COMMENTS OF THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

I. Introduction

On July 18, 2008, Level 3 Communications, LLC (Level 3) petitioned the Federal Communications Commission (Commission) for Special Temporary Authorization of Thousand-Blocks in Area Code 603. The New Hampshire Public Utilities Commission (NHPUC) requests that the Commission deny this petition based on Level 3's lack of proof that it provides basic local exchange service in New Hampshire as certified, and due to missing, incomplete and incorrect state-required documents, as well as questionable NRUF submissions.

II. Commission Orders on Numbering Resource Utilization

As will be explained in more detail below, the NHPUC has reviewed the Level 3 growth code requests in accordance with the Commission's numbering resource optimization standards. The Commission has consistently required that

prior to receiving additional numbering resources carriers demonstrate *verifiable needs for numbers when and where requested*.

We adopt national verification standards to improve the efficiency with which numbering resources are being allocated and used. Specifically, we adopt a more verifiable needs-based approach for both initial and growth numbering resources that is predicated on proof that carriers need numbering resources when, where, and in the quantity requested. We reject the contentions that assigning numbering resources on the basis of readiness to provide service or need will disproportionately affect new entrants. On the contrary, the needs-based criteria that we adopt for initial and growth numbering resources establish standards by which all carriers, including new market entrants, can obtain the numbering resources that they need.¹

In its “emergency” petition for additional numbering resources Level 3 argues that it is consistent with the Commission’s numbering rules for a non-carrier, i.e., a VoIP provider, to offer services to a retail end-user and to obtain numbering resources through commercial arrangements with a carrier such as Level 3. In this case, Level 3 claims the New Hampshire telephone numbers it is requesting will be assigned to internet service providers (ISPs) and enhanced service providers (ESPs). In support of its argument that its arrangements with ISPs and ESPs are consistent with the Commission’s numbering resource optimization standards, Level 3 cites two Commission orders, one dealing with E911 requirements for IP enabled telecommunications relay services and another, dealing with number portability for IP enabled services.²

¹ *Number Resource Optimization, Report and Order and Further Notice of Proposed Rule Making*, 15 F.C.C.R. 7574, ¶ 91 (March 31, 2000).

² *Telecommunication Relay Services and Speech-to-Speech Service for Individuals with Hearing and Speech Disabilities; E911 Requirement for IP-Enabled Service Providers*, Report and Order and further Notice of Proposed Rulemaking, FCC 08-151, ¶ 31 (2008) and *In the Matter of Telephone*

While both of these orders acknowledge the VoIP providers' use of a carrier to obtain numbers for end use customers, each decision also makes clear that carriers and non-carriers must use telephone numbers efficiently. The Commission also ruled in each order that it will administer numbering rules consistently across all types of provider. Finally, neither of the orders cited discusses any exceptions to the Commission's number optimization standards for carriers requesting numbers for VoIP providers or other ESPs.

In this case, the NHPUC has asked Level 3 to provide utilization data showing that end-users located in New Hampshire are using the New Hampshire telephone numbers already assigned to Level 3. As described below, the NHPUC's request for utilization data from Level 3 has been consistent with Commission rules and industry standards. Level 3's response to NHPUC requests for data on number utilization is to claim that it gets no information from the ISPs and ESPs about their end use customers' utilization of the assigned New Hampshire numbers. In essence Level 3 is asking for special treatment for its ISP and ESP customers by allowing them to receive additional numbers, without any showing that their end-users have utilized the numbers already assigned, or any showing that the numbers used are associated with customers located in New Hampshire. In fact, in this case it is Level 3 that seeks inequitably favorable treatment.

In the orders cited by Level 3, the Commission has not taken the position that providers receiving numbers from carriers certified in a state should be exempt

Number Requirements for IP-Enabled Services Providers, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCCR 19531, 19,542 ¶ 12 (2007).

from number utilization requirements.³ Such a position would be contrary to FCC policies in favor of efficient number utilization and uniform standards for number procurement.⁴ Prior to receiving any additional New Hampshire telephone numbers, Level 3 should be required to demonstrate the level of end-user utilization of those numbers just as any other carrier must. In the end, it is the New Hampshire end-users whose choice of provider is protected by the equitable use of numbering resources.

III. Level 3 Numbering Resource Requests for Growth Codes in New Hampshire

Level 3 was certified as a CLEC in New Hampshire on September 2, 1998, by Order No. 23,011 in Docket No. DE 98-133. The NHPUC granted Level 3 the authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic (now Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE (FairPoint)). Level 3 was not certified as a wholesale CLEC nor does the NHPUC certify wholesale CLECs. A Local Exchange Carrier is “any person that is engaged in the provision of telephone exchange service or exchange access.”⁵ Telephone exchange service is:

- (1) A service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area

³ Nor do any of the Commission’s orders take a position that carriers who provide only wholesale service meet state requirements for CLEC certification.

⁴ See, *First Report and Order in the Matter of Number Resource Optimization*, 15 FCCR 7574, 7615 (2000).

⁵ 47 C.F.R. § 64.1902.

operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or

(2) A comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.⁶

To the NHPUC's knowledge, Level 3 is not collocated in any FairPoint central office and has not demonstrated it provides telephone exchange service. There is no evidence Level 3 is offering the service it was certified to provide and its certification, therefore, is arguably forfeit pursuant to N.H. Rev. Stat. Ann. 374:27 (providing that if a utility fails to exercise franchise authority within two years after it is granted the utility may not exercise such authority thereafter). Level 3 has obtained **[**BEGIN CONFIDENTIAL**]** [REDACTED] **[**END CONFIDENTIAL**]** New Hampshire telephone numbers, enough to serve nearly half of the state's population.

The NHPUC's research continues to show that Level 3 is assigning New Hampshire telephone numbers to customers outside of New Hampshire and in some cases it appears numbers are assigned to customers outside the country. The limited information provided by Level 3 implies, but does not demonstrate that some of these customers outside of New Hampshire may have end-users in New Hampshire. Nonetheless Level 3 has not provided any information indicating that it currently provides local exchange service in any of the New Hampshire exchanges where it

⁶47 C.F.R. § 64.2305.

holds numbering resources, nor has it ever indicated that its requests for numbering resources were for local exchange customers in New Hampshire.

Level 3 has continually asserted that it utilizes New Hampshire telephone numbering resources for interstate (ISP/ESP) service. Local exchange service is not interstate service and Level 3 has not established that any of the ISPs it serves are located in New Hampshire, further demonstrating that Level 3 does not offer the service for which it was authorized in New Hampshire.

In the delegation order, the Commission gave the NHPUC authority to “*set numbering allocation standards, including the establishment of a requirement that carriers demonstrate facilities readiness.*”⁷ The NHPUC reviews all carriers’ telephone numbering requests to insure the carrier is ready to provide local exchange service in the rate centers for which numbers are requested. Because Level 3 does not provide service to end-users, it has no facilities in any rate centers other than the two rate centers where it has established a point of interconnection. To the best of the NHPUC’s knowledge, these interconnection facilities do not provide local exchange service to customers in these two rate centers.

Level 3 is unable to provide information on the telephone number utilization of its customers. Level 3 claims that the customers to whom it has assigned numbering resources have end-users in New Hampshire, but Level 3 is not privy to the end-users’ identity and cannot verify that the end-users are located in New Hampshire.

⁷*Limited Delegation of Authority to New Hampshire Public Utilities Commission to Implement Number Optimization Measure in the 603 Area Code*, 15 F.C.C.R. 1252 (1999) (emphasis added).

The NHPUC also reviews all carriers' telephone numbering requests to ensure they comply with the Industry Numbering Committee (INC) Central Office Code Assignment Guidelines (COCAG). Paragraph 1.0 of these guidelines states that, "for assignment and routing purposes, the CO code (NXX) is normally associated with a specific geographic location within an NPA, from which it is assigned." Level 3 asserts that its services are provided to other carriers and service providers and Level 3 does not have the ability to provide information on the end-users. If Level 3 is unaware of the utilization of the assigned numbers, then it does not know whether any of the "assigned" numbers are associated with the geographic location from which the numbers are assigned and cannot insure efficient use of its numbering resources.

The COCAG specifies at 2.13: "Carriers that fail to comply with a state commission request for numbering resource application materials shall be denied numbering resources."⁸ The NHPUC ordered that local exchange carriers which request growth codes in a particular exchange must provide a copy of the code application, months-to-exhaust worksheet, and number utilization data for that specific rate center to the NHPUC at the same time the code application is filed with NANPA.⁹ Despite numerous requests to do so, Level 3 does not file the months-to-exhaust (MTE) or the Parts 1a and 1b with the NHPUC when it files a code application with NANPA.

⁸ FCC 01-362, § 52.15 (g) (5).

⁹NHPUC Docket No, DT 00-001, Order No. 23,385, *Re Number Conservation Measures*, 85 N.H. P.U.C. 20 (2000).

The COCAG also states at 6.4.3:

It is an FCC requirement that Central Office (CO) code holders, pooling carriers, resellers and type 1 wireless carriers (i.e. Reporting Carriers) report accurate and timely forecasting and utilization data via the NRUF Report. The NANPA shall withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in FCC rules.¹⁰ The code/block holders to whom the numbering resources are assigned shall be responsible to report the name and contact information to the NANPA of any other telecommunications carriers that have made numbers available for use and have reported them to NANPA as Intermediate numbers. These other telecommunication carriers, e.g. reseller/type 1 wireless carriers, shall be responsible to provide NRUF Report data to the NANPA.

The NHPUC understands that “intermediate numbers are numbers that are made available for use by another carrier or non-carrier entity for the purpose of providing telecommunications service to an end-user or customer.”¹¹ Level 3 does not report any intermediate numbers despite the fact Level 3 does not directly assign numbers to end-users and Level 3 cannot determine whether the numbers it has assigned are actually in use. The Commission established NRUF reporting requirements to insure that numbering resources are utilized before a carrier obtains additional resources. The inability to determine Level 3’s actual utilization impacts the 603 area code as well as the NANP.

The accuracy of the growth history and forecasted utilization included on Level 3’s MTE worksheet is brought into question by the fact that the growth history for each wire center is identical in each of the previous six months. For

¹⁰ 47 C.F.R. § 52.15 (g) (4).

¹¹ 47 C.F.R. § 52.15 (f) (1) (v).

example, in each of the **[**BEGIN CONFIDENTIAL**]** **[**END CONFIDENTIAL**]** wire centers in New Hampshire where Level 3 has numbers, Level 3 reported **[**BEGIN CONFIDENTIAL**]** **[**END CONFIDENTIAL**]** numbers assigned each month for the past six months. Level 3's forecast shows that, on average, it will require about **[**BEGIN CONFIDENTIAL**]** **[**END CONFIDENTIAL**]** numbers per month per wire center each month for the next six months.¹²

The NHPUC requested that Level 3 review its numbering utilization in light of the amount of resources reported utilized, requested, and forecasted in some of the smaller rate centers in New Hampshire. For example, Level 3's exhibits 2 and 5 list the towns of **[**BEGIN CONFIDENTIAL**]**

[END CONFIDENTIAL**]** where Level 3's reported number utilization surpasses the population. In the towns of **[**BEGIN CONFIDENTIAL**]**

[END CONFIDENTIAL**]** the forecasted growth exceeds the population. Additionally, Level 3's MTE provided in its petition does not match the NRUF data it submitted in the first half of 2008.¹³ Level 3's telephone numbering requests have been denied based on Level 3's failure to adequately answer questions about its NRUF reporting, which prevents the

¹² Exhibit 5 Level 3's petition.

¹³ Level 3's 031508 NRUF; Exhibit 5 Level 3's petition.

NHPUC from verifying that New Hampshire telephone numbers are being used efficiently, a task the Commission has encouraged the states to support.¹⁴

IV. Conclusion

The NHPUC is aware of the Commission's recent rulings on numbering resources and does not seek to obstruct or impair any telecommunications' carrier from properly obtaining numbering resources.¹⁵ The Commission has worked diligently to balance the need for carriers to obtain telephone numbers freely with the need to insure telephone numbers are used efficiently in order to preserve the NANP. Rules and guidelines have been established to achieve those goals. The NHPUC seeks to work within the constraints of federal and state statutes and rules to administer numbering resources on a fair basis.

In its efforts to conserve the 603 area code, as required by N.H. Rev. Stat. Ann. 374:59, the NHPUC reviews all telephone numbering requests equitably. The NHPUC instructed NeuStar to deny Level 3's telephone numbering requests because Level 3 did not comply with the application and reporting requirements established pursuant to FCC order, did not comply with the INC Guidelines administered by the North American Numbering Plan Administration (NANPA), did not provide the required data and, based upon NHPUC review of current Level 3 NRUF data, does not appear to meet the utilization threshold.

¹⁴ *First Report and Order in the Matter of Number Resource Optimization*, 15 FCCR 7574, 7615 (2000) at ¶ 94.

¹⁵ *Third Report and Order in the Matter of Numbering Resource Optimization*, FCC 01-362 (December 28, 2001).

New Hampshire's area code is no longer in jeopardy due to the diligent actions of the NHPUC and the carriers serving New Hampshire customers. Level 3 has not demonstrated that it provides utility service in the rate centers where it has requested numbering resources. The NHPUC continues to review Level 3's petition concerned that Level 3's numbering practices are not an efficient use of a limited New Hampshire resource. Level 3's disregard for the current parameters would hasten the exhaust of 603. Denying Level 3's petition, as stated, would ensure that the "limited numbering resources of the NANP" are used efficiently and would serve the public interest by ensuring the 603 area code is used for the citizens of New Hampshire.

If the Commission decides not to deny Level 3's request for additional numbering resources in New Hampshire, the NHPUC requests that the Commission conduct an audit of Level 3's telephone numbering resources in New Hampshire before granting Level 3 more New Hampshire telephone numbers.

Respectfully Submitted,
NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Dated: August 7, 2008

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CERTIFICATE OF SERVICE

I, F. Anne Ross, Esquire, hereby certify that on this date redacted and unredacted copies of the within document was served upon Dana Shaffer, Chief of the FCC Wireline Competition Bureau, and Harris, Wiltshire & Grannis, LLP, pursuant to 47 C.F.R. § 1.47.

By: _____
F. Anne Ross, Esq.